

Department of Veterans Affairs

§ 21.3023

Philippine and insular forces. See § 3.40 of this chapter.

[36 FR 2508, Feb. 5, 1971, as amended at 38 FR 12110, May 9, 1973; 43 FR 35290, Aug. 9, 1978; 61 FR 26108, May 24, 1996; 61 FR 29295, June 10, 1996; 62 FR 51784, Oct. 3, 1997; 64 FR 23771, May 4, 1999]

§ 21.3022 Nonduplication—programs administered by VA.

A person who is eligible for educational assistance under 38 U.S.C. chapter 35 and is also eligible for assistance under any of the provisions of law listed in this paragraph cannot receive such assistance concurrently. The eligible person must elect which benefit he or she will receive for the particular period or periods during which education or training is to be pursued. The election is subject to the conditions specified in § 21.4022 of this part. The provisions of law are:

- (a) 38 U.S.C. chapter 30,
- (b) 38 U.S.C. chapter 31,
- (c) 38 U.S.C. chapter 32,
- (d) 38 U.S.C. chapter 34,
- (e) 10 U.S.C. chapter 1606,
- (f) 10 U.S.C. chapter 107,
- (g) Section 903 of the Department of Defense Authorization Act, 1981,
- (h) The Hostage Relief Act of 1980, and
- (i) The Omnibus Diplomatic Security and Antiterrorism Act of 1986.

(Authority: 38 U.S.C. 3681)

[54 FR 33886, Aug. 17, 1989, as amended at 57 FR 29798, July 7, 1992; 61 FR 20728, May 8, 1996]

§ 21.3023 Nonduplication; pension, compensation, and dependency and indemnity compensation.

(a) *Child; age 18.* A child who is eligible for educational assistance and who is also eligible for pension, compensation or dependency and indemnity compensation based on school attendance must elect whether he or she will receive educational assistance or pension, compensation or dependency and indemnity compensation.

(1) An election of educational assistance either before or after the age of 18 years is a bar to subsequent payment or increased rates or additional amounts of pension, compensation or dependency and indemnity compensation on account of the child based on

school attendance on or after the age of 18 years. The bar is equally applicable where the child has eligibility from more than one parent.

(2) Payment of pension, compensation or dependency and indemnity compensation to or on account of a child after his or her 18th birthday does not bar subsequent payments of educational assistance.

(3) An election of educational assistance will not preclude the allowance of pension, compensation, or dependency and indemnity compensation based on school attendance for periods, including vacation periods, prior to the commencement of educational assistance.

(b) *Child; under 18 or helpless.* Educational assistance allowance or special restorative training allowance may generally be paid concurrently with pension, compensation or dependency and indemnity compensation for a child under the age of 18 years or for a helpless child based on the service of one or more parents. Where, however, entitlement is based on the death of more than one parent in the same parental line, concurrent payments in two or more cases may not be authorized if the death of one such parent occurred on or after June 9, 1960. In the latter cases, an election of educational assistance and pension, compensation or dependency and indemnity compensation in one case does not preclude a reelection of benefits before attaining age 18 or while helpless based on the service of another parent in the same parental line.

(c) *Child; election.* An election by a child under this section must be submitted to VA in writing.

(1) Except as provided in paragraph (c)(2) of this section, an election to receive Survivors' and Dependents' Educational Assistance (DEA) is final when the eligible child commences a program of education under DEA (38 U.S.C. chapter 35). Commencement of a program of education under DEA will be deemed to have occurred for VA purposes on the date the first payment of DEA educational assistance is made, as evidenced by negotiation of the first check or receipt of the first payment by electronic funds transfer.

(2) An election based on erroneous information furnished by an authorized

representative of the Department of Veterans Affairs is not considered final.

(3) A child other than a helpless child, whose eligibility was based on a finding that the veteran had a permanent total service-connected disability and who commenced a program of education under DEA may not thereafter qualify as a dependent for disability compensation purposes if the veteran is later found to be less than permanently and totally disabled, or for pension, compensation or dependency and indemnity compensation after the veteran's death.

(d) *Spouse or surviving spouse.* Educational assistance allowance may be paid for an eligible spouse or surviving spouse concurrently with pension, compensation or dependency and indemnity compensation.

(Authority: 38 U.S.C. 3562)

(The information collection requirements in this section have been approved by the Office of Management and Budget under control number 2900-0595)

CROSS REFERENCES: *Discontinuance.* See § 3.503(h) of this chapter.

Concurrent payments. See § 3.707 of this chapter.

Certification. See § 3.807 of this chapter.

[30 FR 15631, Dec. 18, 1965, as amended at 31 FR 6773, May 6, 1966; 34 FR 842, Jan. 18, 1969; 40 FR 42879, Sept. 17, 1975; 50 FR 27826, July 8, 1985; 63 FR 45718, Aug. 27, 1998]

§ 21.3024 Nonduplication; Federal Employees' Compensation Act.

(a) *Civilian employment.* The provisions of this paragraph are applicable to cases where there is eligibility for benefits from the Office of Workers' Compensation Programs, under the Federal Employees' Compensation Act (FECA) based on the disability or death as a result of civilian employment of the veteran from whom eligibility for educational assistance is derived.

(1) *Child, spouse or surviving spouse.* A person who is eligible for educational assistance and is also eligible for Office of Workers' Compensation Programs benefits, under the Federal Employees' Compensation Act (FECA) must elect which benefit he or she will receive.

(2) *Veteran, spouse and child—surviving spouse and child.* An eligible person may receive educational assistance

notwithstanding that the Office of Workers' Compensation Programs benefits under the Federal Employees' Compensation Act (FECA) are being paid to a veteran, or surviving spouse.

(3) *Election.* An election of Office of Workers' Compensation Programs benefits, under the Federal employees' Compensation Act (FECA), by or for a child filed on or after July 4, 1966, is a bar to subsequent payments of Department of Veterans Affairs benefits during the period of concurrent eligibility. An election of Office of Workers' Compensation Programs benefits under the Federal Employees' Compensation Act (FECA) by a surviving spouse filed on or after December 1, 1968, is a bar to subsequent payments of Department of Veterans Affairs benefits during the period of concurrent eligibility.

(b) *Military service.* The provisions of this paragraph are applicable to cases where there is eligibility for benefits from Office of Workers' Compensation Program, under the Federal Employee's Compensation Act (FECA) based on the disability or death as a result of military service by the veteran from whom eligibility for educational assistance is derived.

(1) *Child, spouse or surviving spouse.* A person who is eligible for educational assistance and is also eligible for Office of Workers' Compensation Programs benefits, under the Federal Employees' Compensation Act (FECA) must elect which benefit he or she will receive. The election may be made at any time.

(2) *Veteran, spouse and child—surviving spouse and child.* An eligible person may receive educational assistance notwithstanding that the Office of Workers' Compensation Programs benefits, under the Federal Employees' Compensation Act (FECA) are being paid to a veteran, or surviving spouse.

CROSS REFERENCE: *Federal Employees' Compensation.* See § 3.708 of this chapter.

[40 FR 42879, Sept. 17, 1975, as amended at 50 FR 27826, July 8, 1985]

§ 21.3025 Nonduplication; Federal programs.

Payment of subsistence allowance and special training allowance is prohibited to an otherwise eligible person—